

STORAGE NAME: h0687.go
DATE: March 26, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

BILL #: HB 687

RELATING TO: Alachua County Sheriff (collective bargaining for deputy sheriffs)

SPONSOR(S): Representative Casey

COMPANION BILL(S): None.

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS YEAS 6 NAYS 1
 - (2) GOVERNMENTAL OPERATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill reenacts and amends the Alachua County Sheriff's Civil Service Act (the "Act"). It grants public employee status to persons employed by the Alachua County Sheriff who do not otherwise have that right pursuant to law, such as the deputy sheriffs. In addition, this bill expressly provides that all full-time deputy sheriffs employed by Alachua county "shall be deemed public employees and shall enjoy all rights granted public employees by law, including the protection afforded by part VI of chapter 112, Florida Statutes, and the right to engage in collective bargaining."

This bill eliminates the requirement that an employee placed on disciplinary probation for a period of 6 months or more, be required to complete 1 calendar year of service from the date of the action before being granted the right to appeal personnel disciplinary actions or decisions.

This bill further amends the Act to provide that notice of an appeal of a personnel action which results in dismissal, suspension, demotion, or reduction in pay, must be received by the Sheriff no later than 15 working days after the employee is notified of the action (instead of 3 days), and that a Career Service Appeals Board be selected and meet for purposes of hearing the appeal no later than 30 working days after receipt of an appeal by the Sheriff (instead of 15 days). *(The amendments outlined in this paragraph were not accomplished pursuant to the traditional methodology of underlining new language and striking over deleted language. The new language was simply represented as original language.)*

Additionally, this bill provides that all complaints against any employee of the Sheriff may be reviewed by the Sheriff; currently such review is mandatory.

The Economic Impact Statement prepared by the Florida Police Benevolent Association provides that the estimated economic impact on individuals, business, or government is indeterminant. See the "Comments" section of this analysis for additional fiscal comments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, Alachua County deputy sheriffs are not considered public employees and do not have the right to collectively bargain. Additionally, Alachua County Sheriff's employees who are placed on disciplinary probation for a period of 6 months or more must complete 1 calendar year of service before being granted the right to appeal any personnel disciplinary action or decision. The Sheriff must review all complaints filed by his or her employees. Ch. 86-342, L.O.F.

Notice of appeal, by a permanent employee arising from a personnel action which results in dismissal, suspension, demotion, or reduction in pay, must be received by the Sheriff within 3 working days after the employee is notified of the action, and a Career Service Appeals Board must be established within 15 working days after receipt of an appeal by the Sheriff. Ch. 86-342, L.O.F.

BACKGROUND

COUNTY SHERIFF'S OFFICE SPECIAL ACTS

A similar bill was introduced during the 1996 legislative session. HB 2641 was introduced by Representative Casey and died in the House Committee on Community Affairs.

The current civil service system for commissioned and noncommissioned employees, including deputy sheriffs, of the Alachua County Sheriff's Office was created by Chapter 84-388, Laws of Florida, and has been amended once by Chapter 86-342, Laws of Florida.

The enabling act, Chapter 84-388, Laws of Florida, was declared unconstitutional because of a flawed newspaper advertisement. (*See Hindery v. Department of State, etc.*, 13 Fla. Supp. 2d 18). Subsequently, Chapter 86-342, Laws of Florida, was passed by the Legislature and has not been amended since that time. Chapter 86-342, Laws of Florida, sets forth, in part, suspension and dismissal requirements; transition requirements when a new Sheriff takes office; and, establishes Career Service Appeals Boards for the purpose of hearing appeals of permanent employees arising from personnel actions. The commissioned and noncommissioned persons in the employ of the Office of the Alachua County Sheriff, including deputy sheriffs, which are governed by Chapter 86-342, Laws of Florida, are not authorized to collectively bargain.

Furthermore, as discussed below, general law and pertinent case law find that deputy sheriffs are not "public employees" and are therefore not granted the right to collectively bargain. Deputy sheriffs are **appointed** rather than **employed** by sheriffs. (General law could, however, be changed to include deputy sheriffs in the collective bargaining process; but that, to date, has not been the will of the Legislature.)

RELEVANT PROVISIONS OF LAW

Article I, Section 6, Florida Constitution, provides, in part:

The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

Subsection 447.203(3), Florida Statutes, provides, in part:

“Public employee” means any person employed by a public employer except:

- (a) Those persons appointed by the Governor or elected by the people, agency heads, and members of boards and commissions.
- (b) Those individuals acting as negotiating representatives for employer authorities.
- (c) Those persons holding positions by appointment or employment in the organized militia.
- (d) Those persons who are designated by the commission as managerial or confidential employees pursuant to certain criteria.
- (e) Those persons holding positions of employment with the Florida Legislature.
- (f) Those persons who have been convicted of a crime and are inmates confined to institutions within the state.
- (g) Those persons appointed to inspection positions in federal/state fruit and vegetable inspection service.
- (h) Those persons employed by Public Employees Relations Commission (“PERC”).
- (i) Those persons enrolled as graduate students in the State University System.
- (j) Those persons who by virtue of their positions of employment are regulated by the Florida Supreme Court.

“Managerial employees” are defined in s. 447.203(4), F.S., to include police chiefs, fire chiefs, or directors of public safety of any police, fire, or public safety department. Other police officers, as defined in s. 943.10(1), F.S., and firefighters, as defined in s. 633.30(1), F.S., *may* be determined by PERC to be managerial employees of such departments. According to statute, in making such determinations, PERC considers, in addition to the criteria established in s. 447.203(4)(a), F.S., the paramilitary organizational structure of the department involved.

The intent section of Chapter 447, Florida Statutes, does not reveal any legislative intent to include *appointed* deputy sheriffs within the definition of “public employee.”

Chapter 30, Florida Statutes, provides in part:

“Deputy sheriff” means a law enforcement officer ***appointed*** by the sheriff and certified under chapter 943. (Emphasis added.)

Part VI, Chapter 112, Florida Statutes, provides, in part, that all law enforcement officers and correctional officers are entitled to certain protections, rights, and privileges. Section 112.531, F.S., defines "law enforcement officer" to include "any person who is appointed by the sheriff as a deputy sheriff". The inclusion of deputy sheriff within this definition was a result of the amendatory changes made to s. 112.531, F.S., by way of Chapter 93-19, Laws of Florida. However, Chapter 93-19, Laws of Florida (s. 6), as codified in s. 112.535, F.S., also clearly states:

The provisions of Chapter 93-19, Laws of Florida, shall not be construed to restrict or otherwise limit the discretion of the sheriff to take any disciplinary action, without limitation, against a deputy sheriff, including the demotion, reprimand, suspension, or dismissal thereof, nor to limit the right of the sheriff to appoint deputy sheriffs or to withdraw their appointment as provided in chapter 30. Neither shall provisions of chapter 93-19, Laws of Florida, **be construed to grant collective bargaining rights to deputy sheriffs** or to provide them with a property interest or continued expectancy in their appointment as a deputy sheriff. (Emphasis added.)

Relevant Court Case

In *Murphy v. Mack*, 358 So. 2d 822, 826 (Fla. 1978), partially affirming 341 So. 2d 1008 (1st DCA 1977), the Florida Supreme Court found:

Since deputy sheriffs have not been identified as employees by the courts of this state, we cannot assume that the Legislature intended to include them within the definition of public employee without express language to this effect. In the absence of language including deputy sheriffs within the definition set forth in Chapter 447, Florida Statutes (1975), we find that they are not encompassed by the act.

The Florida Supreme Court went on to say:

Accordingly, we hold that a sheriff is a "public employer" within the definition of Chapter 447, Florida Statutes (1975), but that a deputy sheriff is not a "public employee" within the contemplation of said act. *Id.*

B. EFFECT OF PROPOSED CHANGES:

This bill reenacts and amends Alachua County Sheriff's career service act (Ch. 86-342, L.O.F.). It grants public employee status to persons employed by the Alachua County Sheriff's Office and expressly grants collective bargaining rights to all Alachua County deputy sheriffs.

This bill also provides that Alachua County Sheriff's employees who have been placed on disciplinary probation for a period of 6 months or more will no longer be required to complete 1 calendar year of service from the date of the action, before being granted the right to appeal disciplinary or employment decisions.

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HB 687 also changes, from 3 working days, to 15 working days, the period of time within which an employee has to file a notice of appeal with regard to a personnel action against him or her. Additionally, the time-frame for the selection of a Career Service Appeals Board has been extended from 15 working days to 30 working days after receipt of an appeal by the Sheriff. These proposed time-frame changes were made in this bill without striking over the old provisions or underlining the new provisions. Staff detected these changes as a result of careful review of all language contained in this bill compared to existing law.

This bill also provides that persons serving on the Career Service Appeals Board will be considered to be working a regular work day. Additionally, the Sheriff will no longer be required to review all complaints filed, but may review them at his or her discretion.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Chapter 84-388, Laws of Florida, as amended.

Chapter 86-342, Laws of Florida.

D. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

Not applicable.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. It gives Alachua County deputy sheriffs the right to collectively bargain.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

Not applicable.

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

- b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

Not applicable.

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends Chapter 84-388, Laws of Florida, as amended by Chapter 86-342, Laws of Florida, to provide:

Section 1 (1). Grants public employee status to persons employed by the Alachua County Sheriff's Office and eliminates the language denying collective bargaining rights for public employees.

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Section 1(2)(a). Eliminates the requirement that employees placed on disciplinary probation for a period of 6 months or more be required to complete 1 calendar year of service from the date of the action, before being granted the right to appeal personnel disciplinary actions or decisions.

Section 2(2). Provides that service on a Career Service Appeals Board will be considered a regular work day for those selected to serve.

Section 2(3)(a). Changes the time-frame within which the Sheriff must receive a notice of appeal from 3 working days to 15 working days after the employee is notified of the action upon which the appeal is based.

Section 2(3)(b). Changes the time-frame within which the members of a Career Services Appeals Board must be selected and meet for purposes of hearing an appeal, from 15 working days to 30 working days after receipt of an appeal by the Sheriff.

Section 3(2)(b). Gives the Sheriff the discretion to determine whether he or she wants to review filed complaints.

Section 6. Grants collective bargaining rights and public employee status to all full-time Alachua County deputy sheriffs.

Section 2: Provides an effective date upon becoming a law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 23, 24, & 25, 1997

WHERE? The Gainesville Sun, Gainesville, Alachua County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

The Florida Police Benevolent Association supports this bill.

The Florida Sheriff's Association strongly opposes this bill because they believe (1) There will be administrative and overhead costs associated with establishing and implementing collective bargaining with deputy sheriffs; (2) Collective bargaining may raise the tax burden imposed on citizens, due to increased salaries and benefits; (3) Sheriffs will have less flexibility in terminating "rogue" police officers which has administrative, fiscal, and

liability consequences; (4) Deputy sheriffs are “representatives” of the Sheriff, and thus the Sheriff is responsible for their actions; collective bargaining will decrease the control the Sheriff has over his or her representatives; and (5) Sheriffs have the option of collectively bargaining with deputy sheriffs, although they are not required to by law, and individual county Sheriffs, including the Alachua County Sheriff, should continue to retain that option.

The Alachua County Sheriff strongly opposes this bill because he believes that collective bargaining would be cumbersome and would create a division between the elected Sheriff and his employees. He stated that this bill would make the Sheriff’s office less responsive to voters because compliance with union contracts, not just the will of the voters, would be factored into decision making. He stated there are adequate employee safeguards in place, such as career service, permanent employee status after one year, and a prohibition against political firings.

Five other counties have granted public employee status to deputy sheriffs and specifically granted them the right to collectively bargain. Dade County’s charter provides public employee status to their deputies. The other four were accomplished by special acts. They are:

- ◆ Chapter 70-966, Laws of Florida, a special act providing for Volusia County’s Charter;
- ◆ Chapter 89-491, Laws of Florida, a special act providing for Escambia County’s Civil Service Act;
- ◆ Chapter 92-341, Laws of Florida, a special act recodifying the charter for the City of Jacksonville, Duval County; and
- ◆ Chapter 93-370, Laws of Florida, providing for Broward County’s Sheriff’s Office Career Service System.

The charter for Alachua County states that Alachua County has all the home rule powers afforded by the constitution and laws of the State of Florida to charter counties.

House Rule 92(a), provides that “if a committee determines that a local bill may be enacted into law under the authority of a local governing body, that committee shall not report the bill to the Clerk.” Some of the provisions of this local bill (e.g., provisions regarding disciplinary probation, time-frames for filing appeals) could be accomplished by local ordinance *if* the special acts related to the Alachua County Sheriff’s career service system were repealed by the Legislature. The ordinances are then subject to modification or repeal by the local governing body as are other local ordinances. The entire contents of the act remain in full force and effect during the conversion process. However, the specific grant of collective bargaining rights to Alachua County Deputy Sheriffs can only be accomplished by way of a special act. In the alternative, collective bargaining law could be changed by general law to recognize all deputy sheriffs as public employees and thus all deputy sheriffs would be afforded the right to collectively bargain.

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V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 18, 1997, the House Committee on Community Affairs passed two technical amendments to correct bill drafting errors.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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